



GOA REAL ESTATE REGULATORY AUTHORITY
DEPARTMENT OF URBAN DEVELOPMENT

GOVERNMENT OF GOA

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F.No.3/RERA/Complaint(181)/2021/780

Date: 27/10/2022

Khalil Ahamad Aga,

H.No. 29, Gulmohar Park, Behind

SMRC Hospital, Chincalim,

Vasco, Goa-403710.

.....Complainant

V/s

1.M/s Expat Projects & Development Pvt. Ltd.,

With its registered office at Carlton Towers, A wing,

3rd Floor, Unit No. 301-314,

No. 1 Old Airport Road, Bangalore Karnataka-560008

2. M/s Expat Projects and Development Private limited

VIDA Phase 2 located at Survey No. 20/1-L (PART),

Opp. Shiva Temple, Bainguinnim,

Tiswadi, North Goa-403107.

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Respondents

ORDER

(Dated 27.10.2022)

This order disposes of the complaint filed under section 31 of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the said Act'), wherein the complainant has prayed this Authority to issue directions

to the respondents to refund to the complainant an amount of ₹19,20,000/- (Rupees Nineteen Lakhs Twenty Thousand only) which was paid by the complainant to the respondents as consideration towards purchase of apartment in a housing project of the respondents in the name VIDA Phase II situated at Bainguinnim, Tiswadi Goa. The complainant has also prayed for the interest on the said amount as well as for compensation, as the respondents have failed to complete the project by 30th June, 2021.

2. According to the complainant, an apartment in Block B 32-104 was allotted to the complainant since he had paid the full consideration amount towards the same
3. According to the complainant, the project of the respondents was granted registration number by Goa Real Estate Regulatory Authority and it was valid till 30.06.2021.
4. According to the complainant, the respondents did not execute a formal agreement for sale inspite of several requests from the complainant and that by letter dated 09.01.2018, the respondents sent the complainant a copy of an agreement to sell requesting the complainant to sign the said agreement, however, the said agreement for sale contained several errors.



5. It is also stated that the website of the respondents is non functional and is not updated. It is further stated that in May 2018 the respondents sent a cost sheet showing GST calculated on his apartment at 3.1% which is an illegal claim and thus the respondents have over charged GST. The complainant has also raised the issue of correct address of the respondents. According to the complainant, on 17.02.2021 the respondents sent to the complainant “Request to Consent and Consent Letter” under which the respondents asked the consent of the complainant to transfer the project to a third party promoter without sending a detailed contract between the respondents and the third party promoter and accordingly, the complainant declined to give his consent. The complainant thereafter referred to his legal notice dated 23.04.2021 asking the respondents to register the agreement for sale and to inform the complainant the exact stage of construction of the entire project including his apartment and also asked for compensation, which notice was received by the respondents by e-mail as the notice sent at its site address returned unserved. The complainant also referred to the reply of the respondents sent by e-mail dated 03.05.2021, disputing all the allegations and claims of the complainant. It is stated that the complainant was constrained to terminate the agreement. According to the complainant, the registration of the project was valid till 30.06.2021, the date by which the respondents were required to handover possession of the completed apartment/project with occupancy certificate. Hence, the prayer for refund of the consideration amount, interest thereon and compensation.

6. In the reply the respondents have submitted that there were various circumstances beyond the control of the respondents like covid 19 pandemic, slump in the real estate market, delayed payments by the customers, which delayed the completion of the project and accordingly the respondents sought extensions from this Authority for completion of the project. It is further stated that the respondents be allowed to complete the project within the time limit given by this Authority and that refund order from this Authority will only financially burden the respondents, putting the entire project in jeopardy.
7. According to the respondents, they have already carried out work of more than ₹16 Crores out of which payment of about ₹7 Crores is yet to be received from the defaulting customers, which are about 370 in numbers. It is stated that the respondents have bonafide intentions to complete the project and therefore even after approaching this Authority, some customers have agreed for extension of 24 months to deliver the project, though the consent of the complainant/allottes to take development partner is necessary to complete the project.
8. According to the respondents, land was not owned by the respondents and the same was clearly mentioned in the Letter of Intent and that the three apartments were allotted and tentative unit numbers were mentioned in the Booking Confirmation Form but in the Letter of Intent no unit numbers were given. The respondents have stated that the project being affordable cannot be construed as

per government definition of “Affordable Housing Project” as such housing projects will not entail state of the art amenities and high quality of construction, which included a club house, swimming pool, landscape gardens etc. It is stated that the respondents made the said amenities available in the project and yet made the project affordable to benefit the customers. It is stated that the project is not approved as Affordable Housing Project as per government definition under Affordable Housing.

9. Regarding the registration of the agreement to sell, it is stated by the respondents that the respondents approached the complainant on many occasions to register the agreement but the complainant did not respond. It is stated that emails for registration have been sent to the complainant on various occasions but the complainant did not respond. It is stated that the respondents also asked the complainant that if he could not come, the respondents could execute a power of attorney with a friend or family member to execute the agreement to sell. According to the respondents, they sent an agreement to sell for the review of the complainant before its registration and in this regard also relied upon the e-mail requesting the complainant to come forward to execute the agreement to sell.

10. According to the respondents, the progress of the work can be ascertained at the site and also on the RERA website.



5

11. Regarding the address of the respondents, it is stated that as the lease of the office had ended, the office was shut but the respondents informed about the same to their customers regarding change in address on their website as well as through email to the customers and a notice was put outside the previous office announcing shifting of office with the new address.
12. It is stated by the respondents that the development partner is required to infuse funds to complete the project and the same will not amount to any risk to the complainant.
13. The respondents have submitted that it is of paramount importance to the respondents that the project is completed in all aspects and delivered to the complainants and other customers.
14. Written submissions were filed by Ld. Advocate A. Shirodkar for the complainant and Ms. Malvina Franco for the respondents. Oral arguments were also heard. According to the Ld. Advocate for the complainant Section 18 of the said Act is attracted even though there is no written and registered agreement for sale in the instant case and the Ld. Advocate relied upon the oral judgement dated 12.04.2018 passed by Maharashtra Real Estate Appellate Tribunal in the case of "Manjit Singh Dhallwal and others vs. JVPD Properties Pvt. Ltd" in this regard. On the other hand Ms. M. Franco for the respondents submitted that in



the absence of any written agreement for sale Section 18 of the said Act is not applicable and in such situation this Authority has no jurisdiction to refund any amount to the complainant under Section 18 of the said Act and only a civil court has the jurisdiction in such circumstances.

15. After going through the entire records of the case, the points which come for my determination along with the reasons and findings thereon are as follows:-

Sr. No.	Points for determination	Findings
1.	Whether the complainant is entitled for refund of the consideration amount along with the interest thereon under Section 18 of the said Act?	In the negative.
2.	Whether the complainant is entitled for compensation as prayed in the complaint?	To be decided by the Adjudicating Officer under Section 71 of the said Act.

REASONS

Point No.1

16. It is material to note that a written and registered agreement for sale is the basis and the very foundation for all the rights and duties of an allottee under the said



Act. In this regard it is necessary to reproduce hereunder some of the provisions of the said Act. Section 13 of the said Act reads as follows:-

“13. No deposit or advance to be taken by promoter without first entering into agreement for sale.-

(1) A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person **without first entering into a written agreement for sale with such person and register the said agreement for sale**, under any law for the time being in force.

(2) **The agreement for sale referred to in sub section (1) shall be in such form as may be prescribed** and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external developments works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the

promoter in case of default, and such other particulars, as may be prescribed.” (emphasis supplied)

17. From the aforesaid it is clear that since a written and registered agreement for sale is a mandatory statutory requirement, the parties not only have to enter into a written agreement for sale but also it is mandatory to register the said agreement for sale. **Rule 10** of the Real Estate (Regulation and Development) (Registration of Real Estate projects, Registration of Real Estate agents, Rates of Interest and Disclosures on Website) Rules, 2017 also states that the agreement for sale shall be in conformity with the law in force. The said Rule 10(2) states that “Any application, allotment letter or any other document signed by the allottee, in respect of the apartment, plot or building, **prior to the execution and registration of the agreement for sale** for such apartment, plot or building, as the case may be, shall not be construed to limit the rights and interests of the allottee under the agreement for sale or the Act or the rules or the regulations made thereunder”. Thus, as per the said Rule 10, not only the agreement for sale should be in conformity with the law in force but also the said registered agreement for sale prevails over any application, allotment letter or any other document signed by the allottee and such other documents signed by the allottee prior to the execution and registration of the agreement for sale do not limit the rights and interests of the allottee under the said registered agreement for sale.



18. Section 11(4) (a) of the said Act reads as follows:-

“11(4) The Promoter shall-

(a) be responsible for all obligation, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees **as per the agreement for sale**, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub section (3) of Section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.” (Emphasis supplied)

From the aforesaid it is clear that all the obligations, responsibilities and functions of the promoter under the said Act/ rules/ regulations arise from the agreement for sale.



19. **It is material to note that in the instant case neither the Letter of Intent is signed by the complainant nor there is any agreement to sell executed and registered between the complainant and the respondents.** The booking of the apartment by the complainant started way back in the year 2016 and a letter dated 01.02.2016 was issued by the respondents to the complainant requesting the complainant to sign the Letter of Intent, which was forwarded to the complainant. The respondents thereafter sent to the complainant way back on 09.01.2018 i.e. after the commencement of the said Act, as per letter dated 09.01.2018, an agreement to sell with the request to the complainant to sign on pages at the place marked 'x' thereon and to retain the original document and to return the copy of the same. The said agreement to sell till date remains a mere draft agreement to sell. Hence, there is no written and registered agreement to sell between the complainant and the respondents. Though in the legal notice sent by the complainant to the respondents it is stated that despite several demands from the complainant to register his agreement for sale when the apartment was booked, the respondents failed to register the said agreement, even though the complainant showed his readiness and willingness to get the same registered, however, the fact remains that according to the complainant, he paid the entire consideration amount even before executing any agreement for sale and that the respondents by letter dated 01.02.2016 sent Letter of Intent to be signed by the complainant and by letter dated 09.01.2018 sent draft



agreement for sale to the complainant for his signature showing intention of the respondents to have a written and registered agreement for sale.

20. In this regard it is necessary to reproduce hereunder Section 18 of the said Act, which is invoked by the complainant:-

“18. Return of amount and compensation.- (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:



Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

21. Thus, the remedy of the allottee under **Section 18 of the said Act** for the return of the amount paid by him to the promoter along with the interest and compensation if he intends to withdraw from the project or for the interest for every month of delay till handing over of possession if he does not intend to withdraw from the project provided the promoter fails to complete or is unable



to give possession of an apartment, plot or building, “in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein” is available only if the agreement for sale is registered.

The “agreement for sale” referred to in Section 18 of the said Act means a registered agreement for sale as mentioned in Section 13 of the said Act.

22. The Ld. Advocate for the complainant has submitted that Section 18 of the said Act is attracted in the instant case also even though there is no agreement for sale executed between the parties and in this regard highlights the words “as the case may be” in Section 18 of the said Act. The Ld. Advocate for the complainant argued that Section 18 of the said Act can be invoked even in the cases where there is no written agreement for sale since the words “as the case may be” encompasses the return of amount or compensation even in cases which are without any agreement for sale. **There is no merit in the aforesaid argument as the words “as the case may be” mentioned in Section 18 of the said Act precede and give meaning to the words “duly completed by the date specified therein” i.e. the date specified in the agreement for sale.** The clear interpretation of Section 18 of the said Act is given in **Section 19 under Chapter IV** of the said Act which relates to the rights and duties of allottees. All the rights and duties of the allottees as per **Section 19 under Chapter IV** of the said Act arise only when there is a registered agreement for sale between the parties. **Section 19(4)** states that “The allottee shall be entitled to claim the



refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, **in accordance with the terms of agreement for sale** or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.” (Emphasis supplied). The said terms of agreement for sale refer to a registered agreement for sale as mentioned in Section 13 of the said Act.

23. The Ld. Advocate for the complainant relied upon the oral judgement dated 12.04.2018 in the case of “Manjit Singh Dhallwal and Others vs. JVPD Properties Pvt. Ltd.” (supra), wherein it is held that agreement for sale is not mandatory under the said Act and that the complaint of the allottees will not fall for want of agreement for sale, however the aforesaid judgement is not applicable in the instant case because **firstly** the said judgement has not dealt with section 13 of the said Act and **secondly** because in the above case, even in the absence of the agreement for sale, the documents executed between the parties amount to a concluded contract since the documents contained all the terms and conditions of the contract and accordingly it was mentioned therein specifically as follows:-



“In the instant case, nothing was left to be negotiated and settled for future. Terms were agreed and letter of allotment was read and understood. It was a certain and concluded bargain. A concluded contract therefore had come into existence.”

Thirdly, the aforesaid judgement is no longer applicable in view of the exercise being done by the Hon’ble Supreme Court in **writ petition(s) (civil) no.(s) 1216/2020 in the case of “Ashwini Kumar Upadhyay vs. Union of India and ors.”** to have a uniform model agreement for sale for all the states/union territories of India. The aforesaid batch of writ petitions were filed in public interest primarily seeking a direction to the Centre to frame a ‘**Model Builder Buyer Agreement**’ and ‘**Model Agent Buyer Agreement**’ to infuse transparency, ensure fair play, reduce frauds and deliberate delays, restrain promoters and agents from indulging into arbitrary unfair and restrictive trade practices and to protect the rights and interests of customers, in spirit of aims and objects of the RERA Act. In the aforesaid writ petitions, which are still pending, the Hon’ble Supreme Court has passed the following order:-

“We have requested Ms. Aishwarya Bhati, Additional Solicitor General and the *amicus curiae* to prepare a road map for the future after considering the responses which may be submitted by the states/ union territories so that, to the extent it is feasible, a **model agreement for sale** can be

uniformly made applicable to the states/ UTs while leaving a certain degree of flexibility open based on the individual needs and exigencies as they emerge in the respective states/UTs. However, the core of the model agreement must be uniformly followed to protect the interests of home buyers.” (Emphasis supplied)

Hence, there is no merit in the argument of the Ld. Advocate for the complainant that under the RERA Act, agreement for sale is not mandatory.

24. As stated above, **in the instant case, the Letter of Intent is not signed by the complainant and there is no agreement for sale executed and registered between the complainant and the respondents and therefore there is no document executed to show a concluded contract between the complainant and the respondents mentioning all the terms and conditions of the contract including any specified date for handing over possession of the unit to the complainant** and therefore Section 18 of the said Act is not attracted and accordingly no order for refund of the consideration amount and interest thereon can be ordered under the said Section. The remedy, if any, for the refund of the consideration amount with interest thereon, therefore does not lie before the Real Estate Regulatory Authority under the said Act, as it is a case of mere recovery of money outside the purview of the said Act.

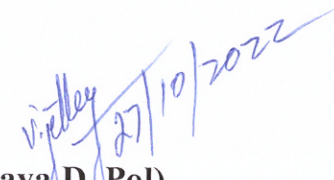


25. Because of the reasons stated above, the complainant is not entitled to any of the reliefs as prayed before this Authority. The instant point is, therefore, answered in the negative.

Point No.2

The instant point has to be decided by the Adjudicating Officer under Section 71 of the said Act.

In the premises aforesaid, the prayers before this Authority in the instant complaint are dismissed by this Authority, however for deciding compensation, if any, the instant complaint is referred to the Adjudicating Officer under Section 71 of the said Act.


(Vijaya D. Pol)
Member, Goa RERA